except at the discretion of the said land owner without paying any compensation to his heirs, executors, administrators or assigns."

Notwithstanding this agreement the said temporary building was transferred to and registered in the name of the 2nd respondent as owner on 3rd November, 1964. Mat bin Bidin died on 3rd February, 1964 and the appellant claimed that the tenancy expired on that date by reason of clause 2 of P.1. The appellant then sent a letter dated 28th February, 1964 to the 1st respondent who was in occupation of the said temporary building informing her that the tenancy expired with the death of Mat bin Bidin on 3rd February, 1964 and she was to remove the said temporary building without any compensation under the terms of P.1. Both the 1st and 2nd respondents did not pay any heed to this letter and so the appellant filed this suit.

At the trial both parties agreed that there were only two issues to be tried, namely,

(1) Whether the Control of Rent Ordinance, 1956 applies.

(2) Whether the defendants have any tenancy at all of the premises.

It is the contention of the appellant that this claim does not come within the purview of the Control of Rent Ordinance, 1956. The appellant further contends that the tenancy automatically ceased or became void upon the death of Mat bin Bidin on 3rd February, 1964 by virtue of clause 2 of P.1. In my view the burden of proof in this case has to be discharged by the appellant. In support of the appellant's claim his counsel referred to *Woodfall* on Landlord & Tenant, 26th Edition, page 982 at paragraph 2130 and I quote:—

"If a term is granted, which in the lease is limited by the happening of a certain event, the term will end on the happening of the event without any notice to quit being required."

In my view this argument is only true at common law because the learned author at page 981, paragraph 2129 states:—

"Where the contract of tenancy specifies a term or event upon which the tenancy is to determine, no notice to quit is necessary at common law."

The appellant's case is therefore based on common law and not on the Control of Rent Ordinance, 1956.

There is no direct evidence when the temporary building was erected but I think it can safely be inferred from the facts that this building was erected by Mat bin Bidin prior to 1944 on vacant land belonging to another person and subsequently on 4th September, 1944 the appellant bought this land subject to the rights of Mat bin Bidin. In *Veerapillai* v. *Ooi Swee Hoe* [1] it was held by Rigby J., and I quote:—

". . . . I am now of the opinion, and I so hold, that where land is originally let as vacant land and buildings of a temporary character are subsequently erected thereon, such buildings are protected under the Control of Rent Ordinance by virtue of section 12(1)(*l*) of that Ordinance."

In the present case it is clear that the temporary building was built by Mat bin Bidin prior to 1944 and it was also used as a dwelling house by him and later by the respondents. In these circumstances I am of the opinion that this temporary building falls within the definition of "premises" under the Control of Rent Ordinance, 1956 and it is therefore protected by the Ordinance. Since this temporary building is protected by the Control of Rent Ordinance, 1956 the tenancy of the respondents can only be terminated by the provisions contained in section 12(1) of the aforesaid Ordinance. This is borne out by the finding of the learned judge in the case of *Veerapillai* v. *Ooi Swee Hoe, supra*, where it was held that the landlord of premises subject to the Control of Rent Ordinance failed in his application to recover possession of land because he had not first taken steps under section 12(1)(*l*) of the Control of the Rent Ordinance as a condition precedent to his application. Similarly, the appellant as landlord has failed to take any steps required of him by section 12(1)(*l*) of the Control of Rent Ordinance, 1956. In the circumstances, I am of the opinion that the appellant cannot succeed by invoking clause 2 of P.1 and the learned president was therefore right in rejecting the appellant's action for recovery of possession of land.

Since the appellant has failed to discharge the burden of proof which lay upon him on the main issue, I do not consider it necessary for me to deal with the other grounds of appeal. In the event, the appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Allen, Gledhill & Ball; Sault, Keith Sellar & Co.*

MACPHAIL & CO. (IPOH) LTD. v. OAM PARKASH

[O.C.J. (Chang Min Tat J.) February 24, 1969]
[Ipoh — Civil Suit No. 197 of 1964]

Contract — Speculative dealing in shares — Whether gaming or wagering.

In this action the plaintiff company a firm of share-brokers sued the defendant for the sum of $49,286.76 for the net loss incurred by them in discharge of the defendant's obligation to deliver the scripts of the shares he had agreed to sell through them. The defence

was gaming or wagering. The defendant claimed that he was a speculator and that the plaintiff company had agreed to grant him time within which to sell or purchase stocks and that such sale or purchase could be effected by him at such time as he felt was opportune.

Held: the evidence of the defendant must be rejected but even on the strength of what he said, the defence of wagering must fail, as it takes two parties to make a bet. In the arrangement as recited by the defendant there was only one party, the defendant to the alleged bet, the plaintiff company was always the losing party. In the circumstances there could not be a bet and the defence of wagering must fail.

Cases referred to:—

(1) *Cooper* v. *Stubbs* [1925] 2 K.B. 753 at p. 771, C.A.

(2) *Universal Stock Exchange Ltd.* v. *David Strachan* [1896] A.C. 166.

(3) *Thacker* v. *Hardy* (1878-9), 4 Q.B.D. 685.

CIVIL SUIT.

W.S.W. Davidson for the plaintiffs.

P.P. Dharmanada for the defendant.

Cur. Adv. Vult.

Chang Min Tat J.: In this action, the plaintiff company a firm of share-brokers sued the defendant basically for the sum of $49,286.76 for the net loss incurred by them in discharge of the defendant's obligations to deliver the scripts of the shares he had agreed to sell through them, alternatively for damages. The defence was gaming or wagering.

It was contended that generally the plaintiff company had indulged in whole-sale speculation, in which it had in many instances "taken a position", the phrase used in the language of share-brokering to describe the operation whereby the share-broker acted not as broker or agent on the instructions of the client but as a principal dealing with the client on a buyer-seller basis. It was sought to establish this by evidence that in a considerable number of cases the plaintiff company had not "married" (another peculiar phrase apparently commonly used in this financial world) the parties to a sale together i.e. by matching an offer to sell at a definite price with an offer to buy at that price and *vice-versa*.

A good deal of evidence was led that in a great number of these cases, the price of shares sold by the plaintiff company on behalf of a selling-client was a few cents lower than the price obtained by them from a buying-client. Conversely, the same position held. I observed however that in a good proportion of such cases, the difference did not exceed the brokerage which the plaintiff company was entitled to get from the selling and the buying-clients. In such circumstances I do not think that it can be said with absolute certainty that such evidence proved speculation on the part of the plaintiff company. It may be that in order to obtain business, the plaintiff company was willing to cut their profits. However, I have no doubt and the plaintiff company through Mr. Davidson has not sought to deny it that the plaintiff company did take up a position in many instances and that one of the reasons for their failure was their speculative operations.

The question to be decided, however, and I believe it was so conceded by Mr. Dharmananda for the defendant was whether the particular contractual relationship between the defendant and the plaintiff company was so tainted by wagering or gaming as to render the plaintiff company's claim unenforceable. The defendant said he entered into wagering contracts with Chan Loo Sim, a one-time director of the plaintiff company. Chan Loo Sim was not called as a witness. Mr. Davidson conceded that allegations by the defendant of any conversation or oral agreement between him and Chan Loo Sim were inadmissible, without Chan Loo Sim being called.

It may be convenient to give in his own words the defendant's version of this agreement:—

> "When I first started dealing with plaintiff company, I made money. Then I asked Chan Loo Sim whether I could buy and take delivery of the shares to keep. He said I could do so. I had the choice whether to keep the scripts or to sell again and concern myself with the difference. This conversation with Chan Loo Sim occurred at later part of April."

Later on, he went on to say:—

> "In my arrangements with Chan Loo Sim, no time limit was placed on my paying for the shares or on my operations to sell, when I purchased or to buy when I sold."

What he said in evidence would appear to conform to his averment in paragraph 5(e) of his statement of defence which was in these words:—

> ". . . . the plaintiff company agreed to grant to this defendant time within which to sell or purchase such stocks or shares either bought or sold by this defendant such sale or purchase to be effected at such time as this defendant felt was opportune."

Then, under cross-examination, the defendant reiterated that:—

> ". . . . I had the option to re-sell or take up the shares. On several occasions I did exercise this right to take up the shares.
>
> When I sold shares, I could deliver the scripts or buy back and settle the difference, one way or the other. *The option is mine.* And I admit on several occasions I did produce the scripts.
>
> It is true that the plaintiff had no corresponding right to insist on my taking up or delivering the scripts.
>
> In the cases where I did not deliver or take up the scripts, I could at any time buy back or sell the shares, at any time, at my election. I am definite no time limit was placed on my right to buy back or resell."

On this evidence, the defendant was bound to admit, as he did in cross-examination, that he could not lose on his transactions. If he had bought on a falling market, all he had to do was to wait and he had the right to wait and keep on waiting till the market rose before selling and pocketing the difference. *Vice-versa*, if he had sold on a rising market, all he had to do was to wait till the market fell before buying back. The difference would still be a profit for him. It was very much a case of "heads I win, tails you lose."

For myself I have not the slightest hesitation in rejecting this evidence as being the truth or even probable. Chan Loo Sim might have been a speculator. The collapse of his firm might have been due to foolishness on his part but he was a businessman and I could not imagine any broker who was not a complete lunatic agreeing to a 100% certainty of loss.

Then again, if the agreement was as claimed by the defendant, his clear defence to the action by the plaintiff company would surely be the one that the time not having come for him to buy back what he had sold, he not having as yet exercised his election, the action was wholly premature and therefore misconceived. He did not make this defence. All he relied on was wagering.

But even on the strength of what the defendant said, the defence of wagering must fail. As Atkin L.J. said in *Cooper* v. *Stubbs* [1] at p. 771, "it takes two parties to make a bet". 'In the arrangement as recited by the defendant there was only one party, the defendant to the alleged bet. The plaintiff company was always the losing party. In my view, under these circumstances, there could not be a bet. Seen in the light of the direction of Cave J. to the jury in *The Universal Stock Exchange Ltd.* v. *David Strachan* [2] which was afterwards approved in the House of Lords and which was in these words:—

> "The question which you have to try is whether these transactions were real bargains for purchase of stock, or whether they were simply gambling transactions intended to and in the payment of differences . . . . I have no doubt that most if not all of you are perfectly familiar with transactions on the Stock Exchange, but I may make use of that as an illustration of my meaning. A man goes to a broker and directs him to buy and sell so much stock as the case may be. That may be, in the eye of the purchaser, a gambling transaction, or it may not. If he means to invest his money in the purchase of the stock which he orders to be bought, that undoubtedly is a perfectly legitimate and real business transaction. If he does not mean to take up his stock, if he means to sell again before the settling day arrives, that may be a gambling transaction so far as he is concerned, but it is not necessarily a gambling transaction so far as the broker is concerned; and in order to be a gambling transaction such as the law points at, it must be a gambling transaction in the intention of both the parties to it",

the absence of any appointed day for settlement and the denial of any right in the plaintiff company to insist on the defendant's taking up or delivering the script are, in my view, fatal to the contention that the plaintiff company had in its dealings with the defendant entered into a gambling transaction.

In *Thacker* v. *Hardy* [3] Lindley J. (as he then was) at page 686 found the following facts:—

> "First, that the defendant was a speculator, and the plaintiff knew him to be so; secondly, that the defendant employed the plaintiff to speculate for him on the Stock Exchange; thirdly, that the defendant knew, or must be taken to have known, that, in order to carry out the transactions, the plaintiff would have to enter into contracts to buy or sell, as the case might be, and in order to protect himself and the defendant, to enter into other contracts to sell or buy respectively; fourthly, that there was, in fact no other way in which the plaintiff could speculate for the defendant as he desired; fifthly that the plaintiff did buy and sell accordingly; sixthly, that the defendant never expected, nor intended, to accept actual delivery of what the plaintiff might buy for him, nor actually deliver what he might sell for him, and that the plaintiff knew that the defendant never expected or intended so to do; seventhly, that the defendant, nevertheless, knew that he incurred the risk or having to accept or deliver, as the case might be, but was content to run that risk, in the expectation and hope that the plaintiff would be able so to arrange matters as to render nothing but differences actually payable to or by him, as the case might be; eighthly, that unless the plaintiff could arrange matters as expected, the defendant would be unable to pay for what was bought for him or deliver what was sold for him, and that the plaintiff knew perfectly well that the defendant would be unable so to do."

On these facts Lindley J. (as he then was) held that the plaintiff broker was entitled to recover, as the employment of the plaintiff by the defendant was not a gaming or wagering contract.

In the instant case, I find as facts what had been decribed in the 1st to the 5th conclusions of Lindley J. The 6th, 7th and 8th conclusions could not however be applied to the disadvantage of the plaintiff company since the defendant himself claimed the option whether to take up or sell in the case of a buying contract and to deliver or buy back in the case of a selling contract. The case is therefore even more favourable to the sharebroker firm than the case in *Thacker* v. *Hardy*.

I come therefore to the conclusion that the transactions in question were not gambling contracts.

The other defence of want of notice of buying in, in the light of the evidence of the then manager of the Stock Exchange and of

the Rules of the Stock Exchange, is without substance.

I am satisfied that in order to fulfil the defendant's contracts of sale, as they were bound to do, the plaintiff company had reasonably purchased scripts in the total value of $51,591.76 and allowing for a profit of $2,305 made on certain of these purchases, the plaintiff company had incurred a loss of $49,286.76.

There will be judgment for the plaintiff company in the sum of $49,286.76 and costs.

Judgment for the plaintiffs.

Solicitors: *Gibb & Co., Dharmananda & Co.*

KAM WAI JIN v. SUPERINTENDENT OF LANDS & SURVEYS, THIRD DIVISION

[A.C.J. (B.T.H. Lee J., Chieng Hie Kwong and Lee Swee Ling Assessors) March 7, 1969]

[Sibu — Land Reference No. 5 of 1969]

Land Laws — Acquisition of land — Objection against award — Principles to be applied — Land Code (Sarawak, Cap. 81), s, 56,

This was an objection against the award of the superintendent in respect of land resumed by the Government of Sarawak. The superintendent offered $28,000 as compensation which was the award made by a government valuer. Another government valuer had recommended an amount of $32,000 later amended to $41,000.

Held, varying the award: (1) in awarding compensation any and every element of value which the lands possess to the owner must be taken into consideration in so far as it increases the value to him; in other words not the land alone but all its potentialities must be considered in assessing the value;

(2) in this case taking the evidence as a whole and making all due allowances the award of the government valuer should be varied and compensation allowed at $60,000.

Cases referred to:—

(1) *Superintendent of Lands and Surveys, Sarawak* v. *Aik Hoe & Co. Ltd.* [1966] 1 M.L.J. 243, F.C.

(2) *Maori Trustee* v. *Ministry of Works* [1959] A.C. 1.

(3) *Nanyang Manufacturing Co.* v. *The Collector of Land Revenue, Johore* [1954] M.L.J. 71.

(4) *Corrie* v. *MacDermott* [1914] A.C. 1056.

(5) *Aik Hoe & Co. Ltd.* v. *Superintendent of Lands and Surveys, First Division* [1968] 1 M.L.J. 293, P.C.

LAND REFERENCE.

C.T. Wong for the applicant.

J.S. Abernethy for the respondent.

B.T.H. Lee J.: This is an objection against the award of Superintendent of Lands and Surveys, Third Division referred to the court under section 56 of the Land Code (Cap. 81) in respect of land resumed by the Government of the State of Sarawak of approximately 0.31 acre of land owned by Kam Wai Jin being land (hereinafter referred to as "the land acquired") comprising Lot 160 Block 36 in Sarikei Land District.

A declaration in accordance with the provisions of section 48 of the Land Code was published in the Sarawak Government *Gazette* on 16th December, 1966. It is therefore required to determine the proper "market value" as at 16th December, 1966.

The Superintendent of Lands and Surveys (hereinafter referred to as "the superintendent") held an inquiry on 18th October, 1967 at which Law Mun Seng the son who held a power of attorney from the owner appeared.

At the inquiry on 18th October, 1967 the superintendent by virtue of section 51 of the Land Code offered $28,000 as compensation which was the award made by Mr. Ambrose Foo, a government valuer, although Mr. R.L. Searcy another government valuer had recommended an amount of $32,000 and amended to $41,000.

In accordance with section 59 of the Land Code the court appointed Mr. Chieng Hie Kwong and Mr. Lee Swee Ling as assessors. A copy of the provisions of sections 60 and 61 of the Land Code was supplied to each of the assessors.

Mr. C.T. Wong appeared for the owner, and Mr. J.S. Abernethy for the superintendent at the hearing of this reference on the 26th, 27th and 28th November, 1968.

For ease of reference, the awards of compensation, amount claimed and brief particulars of the land acquired are set out as follows:—

Description of land	*Nature of property*	*Special Conditions*	*Amount Awarded*	*Amount Claimed*
Lot 160 Block 36	Residential	Land to be used for residential purposes.	$28,000 by Mr. Ambrose Foo.	$120,000
0.31 acre more or less		Only one house to be built on land	$32,000 by Mr. R.L. Searcy subsequently amended to $41,000	Reduced to $110,000 in the course of hearing.